

REMARKS

In the Office Action, claims 1-132 were rejected under 35 U.S.C. § 101 as being purportedly directed to non-statutory subject matter. In particular, the Office Action asserts that “[c]laims 1-132 are drawn to a computer implemented process that merely manipulates data or an abstract idea, or merely solves a mathematical problem without a limitation to a practical application in the technological arts.” (Office Action, p 3.)

Applicant respectfully disagrees.

According to the Office’s Interim Guidelines for Examination of Patent Applications for Statutory Subject Matter Eligibility, one test for determining whether a process is statutory is to determine whether it produces a “useful, concrete, and tangible result,” as required by *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368, 1373 (Fed. Cir. 1998). The Guidelines explain that “the tangible requirement does require that the claim must recite more than a § 101 judicial exception, in that the process must set forth a practical application of that § 101 judicial exception to produce a **real-world result**....In other words, **the opposite meaning of ‘tangible’ is ‘abstract.’**” Interim Guidelines for Examination of Patent Applications for Statutory Subject Matter Eligibility, p. 21.

In accordance with the Interim Guidelines, all of claims 1-132 recite methods that produce tangible results. In the *State Street Bank* case, the Federal Circuit held that the tangible result of a process applying a mathematical algorithm was statutory because it resulted in “a final share price momentarily fixed for recording and reporting purposes.” *State Street Bank & Trust Co.*, 149 F.3d 1373. Similarly, the process recited in claim 1 produces a tangible result, e.g., enabling an analysis taking into account impact of at least one environmental factor. Furthermore, claims 59 and 81 recite processes that

produce tangible results, e.g., a determination of at least the initial effectiveness of a treatment of an external body portion. All of these results are “real world” and not abstract. Because independent claims 1, 59, and 81 recite processes that produce useful, concrete, and tangible results, Applicant respectfully requests reconsideration and withdrawal of the § 101 rejections of claims 1-132.

The Office Action at p.2 provides guidelines illustrating a “preferred” layout for the specification of a utility application. Applicant respectfully submits that the guidelines are a preference, not a requirement, and that the specification layout of this application is in compliance with the applicable rules of practice.

In view of the foregoing remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By: 

Anthony M. Gutowski
Reg. No. 38,742